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IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITIONS NO. 37 and 43 of 2014

CRIMINAL WRIT PETITION NO. 37 of 2014

Dr. Vivekanand Jawali @
Vivek Jawali,
Chief Cardio Vascular and
Thoracic Surgeon,
Fortis Hospitals Limited,
154/9, Bannerghata Road,
Opposite IIM-B,
Bangalore, 560 076 ... Petitioner.

Versus

1. State of Goa,
through Public Prosecutor,
High Court Complex,
Panaji, Goa.
2. Police Inspector,
Panaji Police Station,
Panaji, Goa. ... Respondents,

Mrs. Antonieta Ribeiro e Souza,
Wife of Feliciano D'Souza,
Age about 83 years,
Resident of 'Models Exotica',
No. 5 UG-1, Santa Inez,
Panaji-Goa. ... Intervenor.

AND

CRIMINAL WRIT PETITION NO. 43 of 2014

Mr. Karthik Rajagopal
Zonal Director (Service),
Fortis Hospitals Limited,
154/9, Bannerghata Road,
Opposite IIM-B,

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Bangalore, 560 076 ... Petitioner.

Versus

1. State of Goa,
through Public Prosecutor,
High Court Complex,
Panaji, Goa.
2. Police Inspector,
Panaji Police Station,
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Mrs. Antonieta Ribeiro e Souza,
Wife of Feliciano D'Souza,
Age about 83 years,
Resident of 'Models Exotica',
No. 5 UG-1, Santa Inez,
Panaji-Goa ... Intervenor.

Mr. Arun Bras De Sa, Advocate for petitioner in both the petitions.

Mr. D. Lawande, Additional Public Prosecutor for the respondents
in both the petitions.

Mr. S. D. Lotlikar, Senior Advocate with Ms. M. Furtado, Advocate
for the intervenor in both the petitions.

CORAM :- U. V. BAKRE, J.

Reserved on : 13th January, 2015

Pronounced on : 10th February, 2015

JUDGMENT :

Heard Mr. Bras De Sa, learned Counsel for the petitioners,
Mr. Lawande, learned Additional Public Prosecutor for the
respondents and Mr. Lotlikar, learned Senior Counsel for the

intervenor.

2. This common judgment shall dispose of both the above writ petitions since they are filed against the summons dated 10/01/2014 issued to the petitioners by the learned Chief Judicial Magistrate, Panaji in Criminal Case No. IPC/265/2013/A.

3. Rule. Rule made returnable forthwith. By consent, heard forthwith.

4. A complaint dated 21/12/2011 was lodged by Mrs. Antonieta Ribeiro D'Souza (intervenor) to the Officer incharge of Panaji Town Police Station against (i) Fortis Hospitals Ltd. (ii) Dr. Vivek Jawali (iii) Shri Abhinandan N. Dastenavar and (iv) Dr. Selwyn Colaco, in which she alleged as follows :

On or about 30/08/2010, it was diagnosed that the intervenor suffered from heart ailment and a heart surgery was imperative. On 26/09/2010, the intervenor consulted Dr. Vivek Jawali at the clinic of Dr. Francisco Colaco at Margao and he opined that open heart surgery was urgently required followed by AVR (Mosaic Valve) and that she would have to report to the Fortis Hospitals, Bangalore two days before the surgery date for necessary tests. The intervenor was advised by Dr. Jawali to meet

Mr. Abhinandan N. Dastanavar, Marketing Manager of Fortis Hospitals, who was with Dr. Jawali in the same room where she was examined and she was asked to discuss further details with said Mr. Abhinandan. Said Abhinandan told her that she had to deposit ₹ 4,00,000/- by way of demand draft in favour of Fortis Hospitals Ltd. on arrival at the Hospital as a security deposit and that in case she was held to be entitled to benefit under the mediclaim scheme of the Goa Government, then, an amount of ₹ 2,50,000/- would be refunded to her. All this was reduced to writing on the letterhead of Dr. Jawali at Dr. Colaco's clinic in Margao. The intervenor, accordingly, reported to Fortis Hospitals, Bangalore on 08/10/2010. She deposited an amount of ₹ 4,00,000/- and presented to the reception desk of Fortis Hospitals a letter from the Director of Health Services of Goa Government undertaking to pay a sum of ₹ 1,50,000/- towards the treatment. The intervenor was given cardiac estimate dated 09/10/2010 amounting to ₹ 2,29,000/-. After regular investigations/tests were conducted, a revised estimate dated 09/10/2010 was given to her wherein the total expenditure was estimated at ₹ 1,48,700/-. On 08/10/2010, she was admitted to a multi bed room, as is done to patients from Goa claiming benefit under mediclaim scheme. On 10/10/2010, at 1.30 p.m., the intervenor was asked to sign a dischargesheet while she continued to be placed in the same multi

bed room in which she continued till the end. On enquiries, it was told that it was a mere formality and that she would remain in the same room No. 643 till the date of discharge. The operation was done on 10/10/2010 and she was discharged on 23/10/2010. On the day of discharge, the intervenor was presented with a bill for ₹ 4,36,639/- against the estimate dated 09/10/2010 amounting to ₹ 1,48,700/-. The intervenor was made to pay further sum of ₹ 36,639/- since she had already deposited previously a sum of ₹ 4,00,000/-. Subsequently, the intervenor was shocked to learn that her claim for reimbursement of expenditure had been rejected by the Government of Goa on the ground that she had taken treatment in "Delux Twin Sharing Room". The intervenor had, in fact, been admitted and remained throughout in multi bed room No. 643. Her enquiries revealed that in the letter dated 24/01/2011, written by the Hospital to the Joint Director of Accounts (Health), Government of Goa, the hospital had falsely and mischievously stated that she had, on admission to the Hospital, requested for "Delux Twin Sharing Room" of her choice. The accused above named, therefore, hatched a conspiracy to cheat her and in the process, first induced her to part with a sum of ₹ 4,00,000/- in favour of the accused no. 1 hospital and thereafter, a sum of ₹ 36,639/-. The accused by misrepresentation and fraud recovered from her a sum of ₹ 4,36,659/- and also

falsely represented to the Government of Goa that she had been treated in a “Delux Twin Sharing Room”.

5. An offence vide crime No. 290/2012, under Sections 403, 420 and 120-B of I.P.C. was registered as a result of the said complaint. After completion of the investigation, chargesheet has been filed against four accused persons namely, Mr. Karthik Rajbabalan (accused no. 1), Dr. Vivekanand Jawali (accused no. 2), Shri Abhinandan Dastanavar (accused no. 3) and Shri Selwyn Colaco (accused no. 4), alleging that they conspired and made the intervenor to believe that she would be given medical treatment within the estimate sum of ₹ 2,29,000/- and further assured her that she will be benefited by Mediclaim facility but instead falsely represented to the DHS, Government of Goa that she had taken treatment in “Deluxe twin share room” due to which her claim of re-imburement of expenditure was rejected by the Government of Goa, and thus, cheated the intervenor to the tune of ₹ 2,07,539/-. By order dated 29/11/2013, the learned Chief Judicial Magistrate, Panaji, took cognizance of the case for offence punishable under Sections 403, 420, and 120-B of I.P.C. On 10/01/2014, the learned Chief Judicial Magistrate issued summons to the petitioners to appear before him on 07/02/2014 to answer the charge to offences under Sections 403, 420, 120-B of I.P.C. The petitioners are

aggrieved with the said issuance of summons against them and have filed the present petitions.

6. Mr. Bras De Sa, learned Counsel for the petitioners pointed out that insofar as the petitioner Karthik Rajagopal is concerned, there is absolutely nothing at all as against him in the chargesheet papers and even his name is not figuring in the First Information Report. He submitted that a civil suit for recovery of money has been filed by the intervenor and her husband and even in that civil suit, the petitioner Karthik Rajagopal is not a party. He, therefore, urged that the process issued as against the petitioner Karthik is without any material of whatsoever nature against him and is an abuse of the process of law, and therefore, the same is required to be quashed and set aside. He further submitted that a perusal of the chargesheet and other annexures reveals that the grievance of the intervenor is that by letter dated 24/01/2011, the Hospital falsely informed the Joint Director of Accounts (Health), Government of Goa that the complainant had, on admission to the Hospital, requested for a Deluxe Twin Sharing Room of her choice and had submitted a bill amounting to ₹ 26,571/-. He submitted that this letter was not issued by any of the petitioners. He pointed out that the part played by the petitioner Dr. Jawaji was only to examine her and give opinion that open heart surgery was

required and she should report to Fortis Hospitals and to meet Mr. Abhinandan Dastanavar, for further details and ultimately to conduct the necessary operation with the help of his team. He submitted that absolutely no evidence is there to spell out the ingredients of Sections 403, 420 and 120-B, as against the petitioner Dr. Vivekanand Jawali. Learned Counsel submitted that the Magistrate did not even scrutinize the contents of the F.I.R. and other documents and mechanically issued process when there was absolutely no prima facie evidence against the petitioners. He submitted that leave aside grave suspicion, not even simple suspicion can be culled out against the petitioners from the chargesheet filed under Section 173 of Cr.P.C. He, therefore, urged that in such circumstances, this Court should interfere in the exercise of powers under Section 482 of Cr. P. C. to avoid the abuse of the process of law. He read out the statements of various witnesses which form part of the chargesheet which reveal that there was nothing wrong done by the petitioners. He, therefore, urged that both the petitions be allowed. Mr. Bras De Sa, learned Counsel for the petitioners relied upon the following judgments :

- (i) ***Uma Shankar Gopalika Vs. State of Bihar and another***, [(2005)10 SCC 336]
- (ii) ***All Cargo Movers (India) Private Limited and others Vs. Dhanesh Bedarmal Jain and another***,

[2007(14) SCC 776]

(iii) *Devendra and others Vs. State of Uttar Pradesh and another*, [(2009)7 SCC 495]

(iv) *V. Y. Jose and another Vs. State of Gujarat and another*, [(2009)3 SCC 78]

(v) *Rajiv Thapar and others Vs. Madan Lal Kapoor*, [(2013)3 SCC 330]

(vi) *Prashant Bharti Vs. State (NCT of Delhi)*, [(2013)9 SCC 293]

(vii) *Umesh Kumar Vs. State of Andhra Pradesh and another*, [(2013)10 SCC 591]

(viii) *V. P. Shrivastava Vs. Indian Explosives Limited and others*, [(2010)10 SCC 361]

(ix) *Asmathunnisa Vs. State of A. P.*, [(2011)11 SCC 259]

(x) *Dhariwal Tobacco Products Ltd. and Ors. Vs. State of Maharashtra and another*, [AIR 209 SC 1032].

7. On the other hand, Mr. Lawande, learned Additional Public Prosecutor, submitted that as per the chargesheet, both the petitioners are Directors of the Hospital. He submitted that Section 120-B of I.P.C. is applicable to them. He submitted that

this is a warrant case where only summons has been issued against the petitioners to appear and that arguments before charge have not yet been heard and the petitioners can make out a case for discharge before the trial Court. He submitted that at the stage of issuance of process, the Court need not apply its mind seriously.

8. Mr. Lotlikar, learned Senior Counsel for the intervenor, invited my attention to the prayer clauses in the Writ Petitions and submitted that there is no prayer for quashing of F.I.R. He submitted that challenge is only to the issue of process. According to him, when process is issued, the Magistrate does not and need not apply mind. He submitted that the case is a warrant case and, therefore, arguments before charge would be heard and the question whether the petitioners are entitled for discharge or not, would be decided at that stage, by the Magistrate. He submitted that this Court should keep in mind that offence punishable under Section 120-B is involved in the present case and there cannot be any direct evidence regarding this offence. He submitted that there is evidence that the petitioner Dr. Jawali had referred the complainant to the accused Abhinandan. According to the learned Senior Counsel, at least at this stage, there is evidence that the petitioners are Directors of the Hospital and any discrepancy

anywhere may be a ground for cross-examination. Learned Senior Counsel relied upon the following judgments :

- (i) *Arvind Kejriwal and others Vs. Amit Sibal and another*, [2014(1) JCC 229].
- (ii) *Bhushan Kumar and another Vs. State (NCT of Delhi) and another*, [(2012)5 SCC 424] .
- (iii) *Krishna Kumar Variar Vs. Share Shoppe*, [(2010)12 SCC 485]

9. I have gone through the entire material on record including the copy of the chargesheet and annexures. I have considered the arguments advanced by the learned Counsel for the parties as also the judgments relied upon by them.

10. Let us, at the outset, see whether the petitions are maintainable against the issuance of process dated 10/01/2014. In the case of *"Krishna Kumar Variar"* (supra), relied upon by the learned senior Counsel for the intervenor, summons was issued to the accused in a case under Sections 415/420 of I.P.C. The accused had challenged the summoning order on the ground that it is only the Court at Bombay which has jurisdiction to try and entertain the complaint. The petition of the accused under Section

482 of Cr.P.C. challenging summoning order was rejected by the High Court. Therefore, he was before the Hon'ble Supreme Court. The Apex Court observed that in such cases, where the accused or another person raises an objection that the trial Court has no jurisdiction in the matter, the said person should file an application before the trial Court making this averment and giving relevant facts. The Apex Court further observed that whether the Court has jurisdiction to try/entertain the case will, at least in part, depend upon the facts of the case. The Apex Court held that instead of rushing to the higher Court against the summoning order, the person should approach the trial Court with suitable application for this purpose and the trial Court should, after hearing both the sides and recording evidence, if necessary, decide the question of jurisdiction before proceeding further with the case. Thus, in the above case, the Apex Court has not held that a petition under Section 482 of Cr. P. C. is not maintainable against the summoning order. Since it was found that the question of jurisdiction depended on facts of the case for which the trial Court may have to record evidence and hear the parties, the Apex Court directed the accused to approach the trial Court with suitable application. In the case of *"Bhushan Kumar and another"* (supra), also relied upon by the learned senior Counsel, appeals were filed against the final judgment and order passed by the High Court whereby the

High Court had rejected the prayer of the appellants for quashing the summoning order passed by the Metropolitan Magistrate, in an F.I.R. under Section 420 of I.P.C.. The High Court of Delhi had rejected the prayer to quash the summoning order on merits but at the same time had also concluded that the petition filed under Section 482 of the Code is not maintainable. The questions before the Hon'ble Supreme Court were: (a)- whether taking cognizance of an offence by the Magistrate is the same as summoning an accused to appear? and (b)- whether the Magistrate, while considering the question of summoning an accused, is required to assign reasons for the same? The Hon'ble Supreme Court has observed that Section 204 of Cr. P. C. does not mandate the Magistrate to explicitly state the reasons for issuance of summons. Section 204 of Cr.P.C. mandates the Magistrate to form an opinion as to whether there exists a sufficient ground for summons to be issued, but it is nowhere mentioned in Section 204 that the explicit narration of the same is mandatory, meaning thereby that it is not a prerequisite for deciding the validity of the summons issued. It has been held that the order passed by the Magistrate cannot be faulted with only on the ground that the summoning order was not a reasoned order. In paragraph 20 of the judgment, the Hon'ble Apex Court observed thus :

"It is inherent in Section 251 of the Code that when

an accused appears before the trial Court pursuant to summons issued under Section 204 of the Code in a summons trial case, it is the bounden duty of the trial Court to carefully go through the allegations made in the charge sheet or complaint and consider the evidence to come to a conclusion whether or not, commission of any offence is disclosed and if the answer is in the affirmative, the Magistrate shall explain the substance of the accusation to the accused and ask him whether he pleads guilty otherwise, he is bound to discharge the accused as per Section 239 of the Code."

11. There can be no dispute that the summoning order passed by the Magistrate cannot be faulted with only on the ground that the same is not a reasoned order. However, the Hon'ble Apex Court in the case of ***"Bhushan Kumar and another"*** (supra) has clearly held that the petition filed before the High Court under Section 482 of the Code, against the summoning order, was maintainable. In paragraph 21 of the judgment, the Apex Court has observed that the conclusion of the High Court that the petition filed under Section 482 of the Code is not maintainable cannot be accepted in view of various decisions of the Apex Court vide '*Pepsi Foods Ltd. V. Judicial Magistrate*', [(1998) 5 SCC 749]; '*Dhariwal Tobacco Products Ltd. V. State of Maharashtra*', [(2009) 2 SCC 370; and '*M.A.A. Annamalai V. State of Karnataka*', [(2010)

8 SCC 524]. Thus, in the present case it can be said that merely on the ground that the learned Chief Judicial Magistrate has not given reason for issuing summons to the petitioners, the summoning order cannot be quashed but if the same cannot sustain on merits, it can be quashed and set aside. In the case of *“Arvind Kejriwal and others”* (supra), an appeal was filed against summoning order in a Private Criminal Case under Sections 500 and 501 of I.P.C., on the ground that the respondent was not aggrieved person within the meaning of Section 199(1) of Cr .P. C. The Hon'ble Supreme Court held that as observed in various proceedings, the accused are entitled to hearing before Metropolitan Magistrate at the stage of framing of notice under Section 251 of the Code in all the summons cases arising out of the complaints. The Magistrate has to frame notice under Section 251 of the Code only upon satisfaction that prima facie case was made out against the accused. However, if the Magistrate does not find prima facie case against the accused, the Magistrate shall discharge/drop the proceedings against the accused. The Hon'ble Supreme Court, therefore, permitted the petitioners to urge pleas raised in the said petition before Metropolitan Magistrate at the stage of framing of notice under Section 251 of Cr.P.C. The Apex Court, in the above case has not held that petition under Section 482 of Cr. P. C. is not maintainable against summoning order in warrant case.

12. In the case of *“Uma Shankar Gopalika”* (supra), the offences involved were under Sections 420 and 120-B of I.P.C. The Patna High Court had rejected the petition under Section 482 of Cr. P. C. for quashing the First Information Report lodged against the petitioner. The Hon'ble Apex Court found that the complaint did not disclose any offence either under Section 420 or Section 120-B of I.P.C. and that the case was purely of a civil dispute. It was held that in all such facts allowing investigation to continue would amount to abuse of process of law. The prosecution was, therefore, quashed.

13. In the case of *“All Cargo Movers (India) Private Limited and others ”* (supra), the offences involved were under Sections 406 and 420 of I.P.C. The ingredients of offences were averred in the criminal complaint, which was filed one year after filing of the civil suit. The civil suit was filed alleging negligence and breach of contractual obligations. An application for quashing of the order issuing summons to the appellant by the learned Metropolitan Magistrate was dismissed by the High Court of Gujarat holding that upon perusal of the complaint in the light of the arguments and legal propositions, it was clear that the allegations made therein, prima facie, disclosed the offence of breach of trust and the

important averments were substantiated by the statement on oath of the complainant. However, in the appeal against the said order of the High Court, the Hon'ble Supreme Court held that the allegations made in the complaint petition, even if given face value and taken to be correct in its entirety, do not disclose an offence. It was held that breach of contract simpliciter does not constitute an offence and that allegations in the criminal complaint must disclose the necessary ingredients therefor. The Apex Court held that the Court can, for the purpose of finding out as to whether the said allegations are prima facie correct, take into consideration the correspondences exchanged by the parties and other admitted documents. The Apex Court held that criminal proceedings should not be encouraged, when it is found to be malafide or otherwise an abuse of the process of the Court. It has been held that Superior Courts, while exercising inherent power, should also strive to serve the ends of justice. The Hon'ble Supreme Court allowed the appeal and set aside the impugned judgment of the High Court and consequently the order taking cognizance against the appellant was set aside.

14. In the case of *“Devendra and others”* (supra), criminal proceedings were initiated for offence under Sections 420, 467, 468 and 469 of I.P.C.. The appellants had filed an application for

quashing the first information report before the High Court. The High Court had dismissed the said application. Investigation was completed and a chargesheet was submitted before the Chief Judicial Magistrate. The learned Chief Judicial Magistrate by order dated 20/02/2006 took cognizance of the offence without assigning any reasons. Questioning the legality of the said order, the appellants filed another application under Section 482 of Cr. P. C., which by reasoned order was dismissed by the High Court. The said order was challenged by way of an appeal filed before the Hon'ble Supreme Court. The Apex Court allowed the appeal and thus quashed the order taking cognizance. The Apex Court held thus :

"There is no dispute with regard to the aforementioned propositions of law. However, it is now well-settled that the High Court ordinarily would exercise its jurisdiction under Section 482 of the Code of Criminal Procedure if the allegations made in the First Information Report, even if given face value and taken to be correct in their entirety, do not make out any offence. When the allegations made in the First Information Report or the evidences collected during investigation do not satisfy the ingredients of an offence, the superior courts would not encourage harassment of a person in a criminal court for nothing."

15. In the case of “ *V. Y. Jose and another* ” (supra), a criminal complaint was filed against the appellants and the criminal court had taken cognizance of offences under Sections 417, 420 read with Section 114 of I.P.C.. The appellants moved the High Court under Section 482 of Cr. P. C. on the ground that no case for criminal offence was made out. The High Court, however, dismissed the appellants' application under Section 482. Hence the appeal was filed before the Hon'ble Supreme Court. The Apex Court held thus :

“21. There exists a distinction between pure contractual dispute of civil nature and an offence of cheating. Although breach of contract per se would not come in the way of initiation of a criminal proceeding, there cannot be any doubt whatsoever that in absence of the averments made in the complaint petition wherefrom the ingredients of an offence can be found out, the court should not hesitate to exercise its jurisdiction under Section 482 of the Code of Criminal Procedure.

22. We may reiterate that one of the ingredients of cheating as defined in Section 415 of the Indian Penal Code is existence of an (sic fraudulent or dishonest) intention of making initial promise or existence thereof from the very beginning of formation of contract.

23. Section 482 of the Code of Criminal Procedure, saves the inherent power of the court. It serves a

salutary purpose viz. a person should not undergo harassment of litigation for a number of years although no case has been made out against him.

24. It is one thing to say that a case has been made out for trial and as such the criminal proceedings should not be quashed but it is another thing to say that a person should undergo a criminal trial despite the fact that no case has been made out at all."

16. In the case of ***"Rajiv Thapar and others"*** (supra), the Metropolitan Magistrate, vide order dated 24/08/1998, had summoned the accused, for offence punishable under Sections 304-B and 498-A of I.P.C.. The appellants had assailed the summoning order by filing petition under Section 482 of Cr. P. C.. The petition was dismissed by the High Court granting liberty to the appellants to move the trial Court for seeking recall of summoning order. The application for recalling the summons order was dismissed by the trial Court by holding that there was sufficient material to proceed against the accused under Sections 498-A, 496 and 304-B read with Section 120-B of the I.P.C.. The case was committed to the Sessions Court. The Additional Sessions Judge found that no prima facie case was made out against the accused and thus discharged him. The High Court, however, set

aside the said order of the Additional Sessions Judge. Hence the accused had filed appeal before the Hon'ble Supreme Court. It has been held that in the exercise of its jurisdiction under Section 482, the High Court must make just and rightful choice. At this stage, neither truthfulness of allegations levelled by the complainant can be evaluated nor can weight of defence evidence be determined. Where the allegations bring out all ingredients of charge(s) levelled, the material placed before the Court prima facie shows truthfulness of allegations, trial must proceed even when the accused is successful in raising some suspicion or doubt in allegations levelled. In paragraph 30 of the judgment, the Hon'ble Supreme Court has observed thus :

“30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under Section 482 of the Cr.P.C.:-

30.1 Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?

30.2 Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is

sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.

30.3 Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

30.4 Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

30.5 If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal proceedings, in exercise of power vested in it under Section 482 of the Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom) specially when, it is clear that the same would not conclude in the conviction of the accused."

17. In the case of "**Prashant Bharti** " (supra), the Hon'ble Supreme Court has held that material relied upon by the accused

in support of his plea for quashing the proceedings can be considered if found to be sound, reasonable and indubitable, sufficient to reject factual assertions contained in charges levelled against him and not refuted by the complainant. It has been held that in such cases, proceeding with trial would result in abuse of process of Court and would not serve ends of justice.

18. In the case of "*Umesh Kumar*" (supra), chargesheet was filed for offences under Sections 468, 471, 120-B and 201 of I.P.C. The accused had approached the High Court under Section 482 of Cr. P. C. for quashing the said chargesheet. The High Court quashed the chargesheet only in part in respect of the offence under Section 468 of I.P.C., but refused to quash the chargesheet in respect of offences under Sections 471, 120-B and 201 of I.P.C. Hence the appeal was filed before the Hon'ble Supreme Court. Thus, the petition under Section 482 of Cr. P. C., for quashment of chargesheet was filed before the charges were framed or application for discharge was filed. The Hon'ble Supreme Court held that the High Court cannot reject such petition merely on the ground that the accused can argue legal and factual issues at the time of framing of charge. It has been added that inherent power should not be exercised to stifle legitimate prosecution, but can be exercised to save the accused from undergoing agony of criminal

trial. It has been held thus :

"20. The scope of Section 482 Cr.P.C. is well defined and inherent powers could be exercised by the High Court to give effect to an order under the Cr.P.C.; to prevent abuse of the process of court; and to otherwise secure the ends of justice. This extraordinary power is to be exercised ex debito justitiae. However, in exercise of such powers, it is not permissible for the High Court to appreciate the evidence as it can only evaluate material documents on record to the extent of its prima facie satisfaction about the existence of sufficient ground for proceedings against the accused and the court cannot look into materials, the acceptability of which is essentially a matter for trial. Any document filed alongwith the petition labelled as evidence without being tested and proved, cannot be examined. Law does not prohibit entertaining the petition under Section 482 Cr.P.C. for quashing the charge sheet even before the charges are framed or before the application of discharge is filed or even during its pendency of such application before the court concerned. The High Court cannot reject the application merely on the ground that the accused can argue legal and factual issues at the time of the framing of the charge. However, the inherent power of the court should not be exercised to stifle the legitimate prosecution but can be exercised to save the accused to undergo the agony of a criminal trial. (Vide: Pepsi Food Ltd. & Anr. v. Judicial Magistrate,

AIR 1998 SC 128; Ashok Chaturvedi v. Shitul Chanchani, AIR 1998 SC 2796; G. Sagar Suri v. State of U.P., 2000 SCS (Cri) 513; and Padal Venkata Rama Reddy v. Kovvuri Satyanarayana Reddy, (2011)12 SCC 437)."

19. In the case of "**V. P. Shrivastava** " (supra), the Apex Court held thus :

"15. Before evaluating the contentions advanced on behalf of the parties, it will be useful to briefly notice the scope and ambit of the inherent powers of the High Court under Section 482 of the Code. The section itself envisages three circumstances under which the inherent jurisdiction may be exercised, namely; (i) to give effect to an order under the Code; (ii) to prevent an abuse of the process of court; and (iii) to otherwise secure the ends of justice. Nevertheless, it is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction of the Court. Undoubtedly, the power possessed by the High Court under the said provision is very wide but is not unlimited. It has to be exercised sparingly, carefully and cautiously, ex debito justitiae to do real and substantial justice for which alone the court exists. It needs little emphasis that the inherent jurisdiction does not confer an arbitrary power on the High Court to act according to whim or caprice. The power exists to prevent abuse of authority and

not to produce injustice.

16. *In one of the earlier cases, in R. P. Kapur Vs. State of Punjab AIR 1960 SC 866 : 1960 Cri L.J. 1239, this Court had summarised some of the categories of cases where the inherent power under Section 482 of the Code could be exercised by the High Court to quash criminal proceedings against the accused. These are: (AIR p.869, para 6)*

(i) where it manifestly appears that there is a legal bar against the institution or continuance of the proceedings e.g. want of sanction;

(ii) where the allegations in the first information report or the complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

17. In "*Dinesh Dutt Joshi Vs. State of Rajasthan & Anr.*" (2001)8 SCC 570 : 2002 SCC (Cri) 24, while dealing with the inherent powers of the High Court, this Court has observed thus: (SCC p. 573, para 6)

' ... The principle embodied in the section is based upon the maxim: quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest i.e. when the law

gives anything to anyone, it gives also all those things without which the thing itself would be unavailable. The section does not confer any new power, but only declares that the High Court possesses inherent powers for the purposes specified in the section. As lacunae are sometimes found in procedural law, the section has been embodied to cover such lacunae wherever they are discovered. The use of extraordinary powers conferred upon the High Court under this section are however required to be reserved, as far as possible, for extraordinary cases.'

18. In *G. Sagar Suri Vs State of U.P.* (2000) 2 SCC 636 : 2000 SCC (Cri) 513, this Court had opined as follows: (SCC p. 643, para 8)

'Jurisdiction under Section 482 of the Code has to be exercised with great care. In exercise of its jurisdiction the High Court is not to examine the matter superficially. It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be

exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."

20. From the above, it is clear beyond doubt that the petition filed before the High Court, under Section 482 of the Code, challenging the summoning order, is maintainable. This Court, in the exercise of powers under Section 482 of Cr. P. C., can quash the criminal proceedings if the allegations made in the first information report and the evidences collected during investigation, even if given face value and taken to be correct in its entirety, do not disclose an offence. Jurisdiction under Section 482 Cr. P. C. has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice. This court should not encourage harassment of a person in a criminal court for nothing. The Court cannot reject such petition merely on the ground that the accused can argue legal and factual issues at the time of framing of charge.

21. In the present case, a perusal of the chargesheet and all the annexures reveals that there is absolutely no allegation at all as against the petitioner Mr. Karthik Rajgopal. The first information report does not name him. Though in column no. 11 of the

chargesheet, Shri Kartik Rajbabalan has been shown as accused no. 1, however, in column no. 16, wherein the brief facts of the case have been stated, there is no allegation against him and his name does not figure therein. Admittedly, Civil suit No. 38/2013 for recovery of money has been filed by the complainant and her husband, on similar grounds. It is well settled that this Court can look into the documents which are undisputed. In this civil suit also, there is absolutely no allegation against the petitioner Shri Karthik Rajgopal. The civil suit has been filed against Fortis Hospitals Ltd., Dr. Vivek Jawali, Shri Abhinandan Dastanavar, Dr. Selwyn Colaco, State of Goa and Directorate of Health Services. Shri Karthik Rajgopal is not even a defendant in the said suit. Even the learned Additional Public Prosecutor for the respondents and the learned Senior Counsel for the intervenor could not show any material which could even raise suspicion as against the petitioner Shri Karthik Rajgopal. Therefore, merely because the trial Court has issued process and is yet to hear arguments before charge, the said petitioner Shri Karthik should not be made to face the said agony, since the chargesheet as against him is malafide and is certainly an abuse of process of Court.

22. In the brief facts of the case mentioned in said chargesheet

under Section 173 of Cr.P.C., and in the complaint lodged by Mrs. Antonieta Ribeiro D'Souza, the petitioner, Dr. Vivekanand Jawali has been named as Director and Chief Cardiovascular and Thoracic Surgeon of Fortis Hospital Ltd.. However, as has been rightly submitted by the learned Counsel for the petitioners, absolutely no evidence of whatsoever nature has been produced by the prosecution to establish even prima facie that Dr. Vivek Jawali is one of the directors of Fortis Hospitals Ltd. In fact, the list of Directors, as on 17th December, 2009 of said Hospital, which is a part of the chargesheet does not show the name of Dr. Vivek Jawali or of Shri Karthik Rajgopala.

23. The complaint of Mrs. Antonieta Ribeiro D'Souza reveals that she had herself approached the petitioner Dr. Vivek Jawali on 26/09/2010 at the clinic of Dr. Francisco Colaco at Margao. Dr. Jawali had only opined that open heart surgery was urgently required followed by AVR (Mosaic Valve) and that she would have to report to Fortis Hospital, Bangalore two days before the surgery date for necessary tests. Admittedly, the complainant has no grievance at all in so far as the above opinion of Dr. Jawali and about his advice to report to the said Hospital. In the complaint, it is further alleged that Dr. Jawali had advised the complainant to

meet Abhinandan Dastanavar, Marketing Manager of Fortis Hospitals and was asked to discuss further details including the date of operation, cost of the operation, etc. etc. In so far as the above part also, there is no allegation nor there can be any grievance against the petitioner Dr. Jawali. Thereafter, whatever was told to the complainant was by Mr. Abhinandan Dastanavar, who is the accused no. 3. In fact, there is no dispute also regarding the deposit of ₹ 4,00,000/- made by the complainant in favour of Fortis Hospitals Ltd. In whatever that happened on or after 09/10/2010, there is no part played by Dr. Vivek Jawali in any manner except that Dr. Jawali with the assistance of his team conducted the required operation on the complainant. There is no allegation against the petitioner, Dr. Jawali and his team, regarding the operation. It appears that the main grievance lies in the letter dated 24/01/2011 which is written by the Hospital to the Joint Director of Accounts (Health), Government of Goa stating that the complainant, on admission to the Hospital, had requested for a Deluxe Twin Sharing Room and as per her request she was admitted to the room of her choice. This letter, admittedly, was not written or signed by the petitioner Dr. Vivek Jawali or by the petitioner, Mr. Karthik. This letter dated 24/01/2011 has been signed by Dr. Selwyn A. Colaco, the head of medical affairs.

24. There is thus absolutely nothing to connect the petitioner Dr. Vivek Jawali with the allegations made by the intervenor, which may give rise to any offence. There are on record statements of Mrs. Maria Lumen Menezes i.e. head clerk in Mediclaim Cell of Directorate of health Services, Government of Goa; Shri Ganesh Hegde, Associate General Manager, Fortis Hospital, Bangalore; Shri Mohammed Rafiq, billing incharge at Fortis Hospital, Bangalore; Mrs. Sani Thomas, Senior Executive, Nursing at Fortis Hospital and Mr. Deepak Balani, Head of Medical Services at Fortis Hospital. All the above statements do reveal the part that was played by the petitioner Dr. Vivek Jawali, but nothing incriminating is found in the said statements as against the petitioner Dr. Jawali.

25. In the circumstances above, it can certainly be said that merely because there is an opportunity for both the petitioners to apply for discharge or to place their case during arguments before charge, it does not mean that they should be forced to do so, when at this stage itself, it is evident that there is absolutely no material as against the petitioners. The allegation made in the complaint and other material on record, even if given face value and taken to be correct in its entirety, do not disclose any offence, as against

the petitioners. Even otherwise, the dispute appears to be of civil nature which should not involve the petitioners. No offence has been made out as against the petitioners from the allegations in the complaint as also in the statements and documents on record. No purpose would be served by directing the petitioners to undergo harassment of litigation. In my view, an exceptional case has been made out by the petitioners for exercise of jurisdiction under Section 482 of Cr. P. C., by this Court.

26. In the result, both the petitions are allowed.

(a) The process dated 10/01/2014 issued by the learned Chief Judicial Magistrate in Criminal Case No. IPC/265/2013/A is quashed and set aside, qua the petitioners. The said criminal proceedings are quashed, as against the petitioners.

(b) Rule is made absolute in the aforesaid terms.

27. The petitions stand disposed of, accordingly.

U. V. BAKRE, J.

SMA